IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

WP(C).No. 3496 of 2004(N)

AGAINST THE ORDER DATED 15/12/2003 IN EP.37/2003 IN OS.107/2000 of MUNSIFF COURT, QUILANDY

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PETITIONER:

KATUKKATHODIYIL BHASKARAN,
NADUVANNUR AMSOM DESOM, KOYILANDI,
KOZHIKODE DISTRICT.

BY ADV. SRI.B.V.JOY SANKER
SRI.Y.GEORGE

RESPONDENT:

KALIYAKKIL SREEDHARAN NAIR,
NADUVANNUR AMSOM DESOM,
KOYILANDI, KOZHIKODE.

BY ADV. SRI.B.KRISHNA MANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 3496/04)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF THE ORDER DATED 15.12.2003 IN E.A.384/03 IN E.P.37/03 IN O.S.107/2000 OF THE MUNSIFF COURT, KOYILANDI.

EXT.P2: TRUE COPY OF THE AFFIDAVIT FILED IN SUPPORT OF THE PETITION BEFORE THE MUNSIFF COURT.

EXT.P3: TRUE COPY OF THE AFFIDAVIT FILED IN SUPPORT OF THE PETITION BEFORE THE MUNSIFF COURT.

PIUS C. KURIAKOSE,J.

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W.P.(C) No. 3496 of 2004

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Dated: 13th June, 2007

JUDGMENT

Ext.P4 order under which an application for condonation of delay filed by the judgment-debtor was dismissed by the execution court is under challenge.

2.As rightly submitted by Mr.B.Krishna Mani, counsel for the respondent-decree-holder that E.A.No.384/03 could not have even been entertained by the learned Munsiff since there is no power for the execution court to condone the delay. A careful look at Section 5 of the Limitation Act itself will show that execution applications are excluded from the ambit of that Section. The position is no longer res integra in view of the judgment of the Supreme Court in **Damodaran Pillai v. South Indian Bank Ltd**. [2005(4) KLT 192(SC)]. The challenge against Ext.P4 will fail and the Writ Petition is dismissed. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**